U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33515886

Date: OCT. 24, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an information technology project manager in the field of human-computer interactive digital technologies, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference (EB-1) classification makes immigrant visas available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner meets the initial evidentiary requirements for the EB-1 classification, the record did not establish sustained national or international acclaim and that she is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to individuals with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of the beneficiary's achievements in the field through a one-time achievement that is a major, internationally recognized award. If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items, such as awards, published material in certain media, and scholarly articles). Additionally, if the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

Where a beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131–32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner filed the instant petition in October 2023. She has worked as a principal product manager at [redacted] with an annual salary of $200,000 since November 2023. She received a bachelor's degree in computer engineering from [redacted] in 2008 and a master's degree in human-computer interaction[1] from [redacted] in 2011. She claims that she has 20 years of experience and education in computer and information systems and has focused on human-capital interaction for legal and healthcare digital technology services for the past 12 years. She intends to continue to work in the United States as an information technology project manager with companies that offer services to professionals and consumers.

The Petitioner has not claimed that she has received a major, internationally recognized award. Therefore, she must satisfy at least three of the 10 regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner meets three of the 10 criteria: scholarly articles at 8 C.F.R. § 204.5(h)(3)(v), a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and a high salary at 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner maintains that she also meets the criteria for published material at 8 C.F.R. § 204.5(h)(3)(iii) and original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v). The record supports the Director's determination. Because the Petitioner satisfies at least three of the 10 criteria, we decline to address whether she meets two additional criteria.[2]

[1] The Petitioner explains that human-capital interaction is the research, design, and management of the use of computer technology, which focuses on the interfaces between people and computers.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

However, we will consider the evidence submitted as part of the final merits determination.

The Director denied the petition, concluding that the record did not establish the Petitioner warranted favorable consideration in a final merits determination based on the totality of the evidence. On appeal, the Petitioner contends that the Director did not properly consider the evidence submitted, failed to understand a few facts, and employed a standard that was much stricter than the preponderance of the evidence standard.

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated by a preponderance of the evidence sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20. *See generally* 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policymanual/volume-6-part-f-chapter-2 (stating that the officer should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). Here, we determine that the Petitioner has not demonstrated her eligibility.

The Petitioner and two other individuals published two papers in the Association for Computer Machinery (ACM) Journals in 2012 based on their research on musculoskeletal disorders and physiotherapy. The Petitioner and two other individuals filed a patent application in 2016 based on their invention of a semi-automated form-based chat, and this patent application was published in the U.S. Patent Application Publication in 2018. She claimed that her papers were downloaded over 800 times and cited 43 times recognizing her research in the field of healthcare, particularly in the area of physical therapy digital technologies, and that this earned her a keynote speech at the [redacted] in Denmark and at the [redacted] in Texas in 2012.

Relating to the Petitioner's authorship of scholarly articles in a final merits determination, an evaluation of the citations of others to a petitioner's published work can be relevant to the final merits determination of whether a petitioner is at the very top of their field of endeavor. *See Kazarian*, 596 F. 3d at 1121-22.[3] The Petitioner provided a printout from the Google Scholar website showing that these two papers and patent application have been cited 47 times since 2018. However, she did not provide evidence differentiating her publication rate from those of others in her field or otherwise establishing that it is reflective of one who is among the small percentage of the very top of her field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Moreover, the Petitioner has not sufficiently explained how her publication record, which includes three documents over a 12-year timeframe and with her most recent work being published in 2018,

[3] *See generally* 6 *USCIS Policy Manual, supra*, at F.2 (noting that a petitioner may provide evidence that the beneficiary's total rate of citation to their body of published work is high relative to others in the field, such as the person has a high h-index for the field. Depending on the field and comparative data, such evidence may indicate a person's overall standing for the purpose of demonstrating that the person is among the small percentage at the top of the field and enjoys sustained national or international acclaim).

demonstrates having "a career of acclaimed work in the field" and sustained national or international acclaim. *See* H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the intent of Congress that a very high standard be set for individuals of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not shown that her authorships reflect being among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). The record does not sufficiently establish the significance of the Petitioner's authorships or how her publications compare to others who are viewed to be at the very top of the field.

Regarding the Petitioner's performance of a leading or critical role for organizations that have a distinguished reputation, the Petitioner has not shown that her leading or critical roles in three organizations have resulted in sustained national or international acclaim. For example, [redacted] the product management executive and the Petitioner's former manager at [redacted] states that the Petitioner played a critical role in successfully launching the company's free and attorney-assisted LLC formation services in 10 states within six months and that the Petitioner earned a spot bonus award in 2022 for her leadership and commitment. [redacted] a co-founder, the manager, and a biosignals expert at [redacted] states that during her internship at the company, the Petitioner demonstrated outstanding skills and creativity by conceptualizing an Android app aimed at extending the [redacted] clinical product to the mobile domain to support improved diagnosis and enhance the recovery rate of physiotherapy patients. [redacted] a former vice president of product at [redacted] states that the Petitioner performed a critical role within the company where she managed product and user experience teams across several business units of [redacted] and oversaw a portfolio of 20 products and services to serve the information and service needs of legal and healthcare customers and professionals with a human-centered approach.

While these are notable accomplishments, the record does not sufficiently demonstrate how these successes have resulted in national or international acclaim. *See* 8 C.F.R. § 204.5(h)(3). The authors of the recommendation letters describe the Petitioner's past projects and explain her contributions to her former employers, but they do not discuss recognition the Petitioner has received from the field for her work. *See* section 203(b)(1)(A) of the Act. The Petitioner has not shown how her roles within the companies resulted in widespread acclaim from her field, that she drew significant attention from the greater field, or that the overall field considers her to be at the very top garnering with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3).

The Petitioner has demonstrated that she earned a high salary for services in relation to others in the field. While this may indicate some degree of recognition of her achievements in the field, she did not submit sufficient evidence showing that her earnings are at a level reflecting that she is one of the small percentage who has risen to the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner's high salary may be sufficient to meet the regulatory criterion, but the record lacks evidence showing that she has received acclaim or recognition from her compensation. Moreover, the comparative evidence of compensation in the record does not sufficiently establish how her compensation compares to the upper echelon of the field such that it would indicate that she is among the small percentage at the very top of her field.

With respect to published material in professional or major trade publications or other major media, the Petitioner offered two articles about her relating to her work in legal and healthcare technologies published in TechTimes.com and Outlookindia.com. The Petitioner submitted background information from the publications' or organizations' websites or domain summary on these websites from other websites rather than impartial documentary evidence demonstrating that the websites are major media. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media). In addition, the Petitioner presented three additional articles posted on the Internet where she is one of the speakers at a webinar on A/B testing best practices and quoted on the launch of Lawyers.com's Legal Costs & Outcomes Hub, a free online resource for legal consumers. These articles are not about the Petitioner relating to her work in the field. *See* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner has not demonstrated how these non-qualifying articles indicate sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(a) of the Act. Even considering these articles, the Petitioner has not submitted evidence showing that the publication of two media articles about her relating to her work in the field reflects a level of press coverage that represents recognition consistent with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Regarding original scientific contributions of major significance in the field, in addition to the published material and scholarly articles we have discussed above, the Petitioner references letters from his former colleagues and other experts in the field. For example, [redacted] a professor of computer science and information systems at [redacted] asserts that the Petitioner's patent for a semi-automated form-based chat has had a significant impact on legal and healthcare technologies. [redacted], a co-founder of [redacted], states that the Petitioner and her team at [redacted] were the first to launch a free LLC formation service, leading the way for other services to also offer low-cost and no-cost options, democratizing the LLC formation service industry.

Many petitions to classify a person with extraordinary ability contain letters of support. Letters of support, while not without weight, should not form the cornerstone of a successful claim for this classification. Rather, the statements made by the witnesses should be corroborated by documentary evidence in the record. The letters should explain in specific terms why the witnesses believe the beneficiary to be of the caliber of a person with extraordinary ability. Letters that merely reiterate USCIS' definitions relating to this classification or make general and expansive statements regarding the beneficiary and the beneficiary's accomplishments are generally not persuasive. *See generally 6 USCIS Policy Manual*, *supra*, at F.2(B)(3). Here, the letters from experts may support the Petitioner's professional recognition and leadership in the field of human-computer interaction for legal and healthcare digital technologies. Additionally, the letters from her former colleagues, which discuss the Petitioner's contributions in certain projects or to her former employers, may establishes that the Petitioner has made notable contributions to her employers. However, the record does not sufficiently demonstrate that she has received acclaim from the field for the work described in these letters. While we acknowledge her past achievements in her field, the Petitioner has not shown that she has received national or international acclaim for her work on various projects. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3).

To determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence, both individually and within the context of the entire record, for relevance, probative value, and credibility. *Matter of Chawathe,* 25 I&N Dec. at 376. While the Petitioner may disagree with the Director's conclusion, the record does not support the Petitioner's contention that the Director did not properly consider the evidence submitted, failed to understand a few facts, applied a higher standard than the preponderance of the evidence standard, or otherwise erred in denying the petition as a matter of law or policy.

The Petitioner seeks a highly restrictive visa classification intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). In this case, the record as a whole does not demonstrate a level of recognition that indicates the required sustained national or international acclaim or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The record does not sufficiently establish that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

While we may not have addressed each piece of evidence individually, we have reviewed each one individually and considered the evidence within the context of the record. The record does not support a finding that the Petitioner has established the acclaim and recognition required for the EB-1 visa classification and that she is one of the small percentage who has risen to the very top of the field of endeavor. Accordingly, we conclude the Petitioner is not eligible for classification as an individual of extraordinary ability. The appeal will be dismissed for the reasons stated above.

ORDER: The appeal is dismissed.